

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RAY LEE RANSOM JR. §
v. § CIVIL ACTION NO. 6:13cv792
UNITED STATES OF AMERICA §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Movant Ray Ransom, proceeding *pro se*, filed this motion to vacate or correct his sentence under 28 U.S.C. §2255. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings and records, the Magistrate Judge issued a Report on October 23, 2013, recommending that the motion to vacate or correct sentence be dismissed without prejudice because Ransom's direct appeal is still pending. *See United States v. Bernegger*, 661 F.3d 232, 243 (5th Cir. 2011). Ransom did not file objections to the Report; instead, he filed a motion asking that his §2255 motion be withdrawn.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Ransom's request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977) (plaintiff has absolute right to dismiss his complaint under Rule 41(a), Fed. R. Civ. P., prior to the filing of an answer or motion for summary judgment); *Thomas v. Phillips*, 83 Fed.Appx. 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Plaintiff's motion to withdraw his §2255 motion to vacate or correct sentence (docket no. 5), which is in effect a motion for voluntary dismissal of his petition, is hereby **GRANTED**. It is further

ORDERED that the above-styled motion to vacate or correct sentence is **DISMISSED** **WITHOUT PREJUDICE** on the request of the Plaintiff. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 7th day of November, 2013.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE